IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1335 OF 2003
IN
SUMMARY SUIT NO.1047 OF 2003

Mahabir M. Urs
S/O.Late Shri M.S. Mallaraj Urs. & Ors. ...Plaintiffs
Vs.
M/s.Mahalaxmi Engineering Works & Ors. ...Defendants

Mr.S.C.Naidu with Mr.T.R.Yadav i/b.
Mr.C.R.Naidu & Co. for Plaintiffs/Applicants
Mr.Piyush Shah for Defendants 1 to 4

CORAM: SMT.R.S.DALVI,J.
DATED: 7TH JULY, 2005

P.C.

1. The Plaintiff's father since deceased, had entered into a Conducting Agreement with Defendant Nos.1 to 4 on 31st December, 1970 as their licensee for carrying on the Plaintiffs' father's business of manufacturing machineries and machine parts at 35, Mahalaxmi Bridge, Mahalaxmi, Mumbai-400 035. The Defendants 1 to 4 were to pay royalty of Rs.1162/- as per clause 4 of the said Conducting Agreement. They were to employ their own staff for carrying on their business as per clause 9 of the said Conducting Agreement.

2. The Licence was to be renewed upon the defendants, as the Conductors, giving 30 days notice of their intention to renew the Licence to the Plaintiff's father, as owner as per clause 12 of the

agreement. The Plaintiff's father as the owner was to renew the licence upon the terms and conditions stated in that agreement for a further period of only one year, under the same clause No.12.

3. A schedule to the agreement shows certain 8 items of machineries, furniture and fixtures in the premises in which the Defendants were to conduct the Plaintiff's father's business as per the said agreement.

4. It is the Plaintiff's case that the Defendant has inducted one Sai Engineering Works, a partnership firm and received rent/compensation from the said firm, defaulted in payment of the royalty, dishonoured the cheques given towards royalty, put up certain additional construction, removed the Plaintiff's sign board and represented the B.M.C. that they were the tenants of the Plaintiff's father.

5. The Plaintiffs filed a Civil Suit No.49/61 of 1992 in the Small Causes Court at Bombay. The Plaintiffs took out an Interim Notice No.207 of 1992. Defendants 1 to 4 made a written endorsement that they had no intention to part with the premises in favour of any third person. The said Sai Engineering Works made a written endorsement that it was not in possession of the premises. That suit has been returned to this Court for filing, which is the

present suit.

6. The Defendants are stated to have inducted TELCO Ltd. on 1st April, 1995 contrary to the statement made before the Small Causes Court by the present endorsement. The Plaintiffs claim that they received Rs.60,000/- per month from TELCO for the year ended 31st March, 1996 and for which TELCO deducted Tax at source of Rs.14,400/- out of the total annual payments of Rs.7,20,000/-. The Plaintiffs have set out the details of the TDS challans filed with the income tax by TELCO.

7. TELCO surrendered the premises on 31st March, 1998.

8. Defendants 1 to 4 thereafter inducted Defendant No.5. Defendants 1 to 4 are stated to be taking rent of Rs.45,000/- from Defendant No.5 in the garb of "Income towards labour jobs for servicing of motor cycles."

8. It is contended on behalf of the Plaintiffs that the servicing of the motor cycles is not allowable under the terms of Conducting Agreement to Defendants 1 to 4.

9. The Plaintiffs further contend that Defendant NO.5 is the authorised agent and dealer of Hero Honda

Motor Cycles and that Defendant No.5 sells the said motor cycles.

10. It is contended on behalf of the Plaintiffs that though certain receipts are passed by and between Defendants 1 to 4 and Defendant No.5 they aggregate to approximately Rs.45,000/- which is in fact the extent of the rent/compensation received by Defendants 1 to 4 leasing out the premises to Defendant NO.5 contrary to the suit in the Small Causes Court.

11. The Plaintiffs have also contended that the name board of the Plaintiffs "Associated Engineering Works" (AEW) is removed and the name board "Hero Honda" came to be affixed. The Plaintiffs therefore, contend that upon such induction Defendant No.5 used the Plaintiff’s premises for servicing their motor cycles/cars.

12. Defendant No.5 filed an affidavit in this Notice of Motion and made a statement in para No.4 therein that they were not in possession.

13. The Plaintiffs thereafter found new parties in possession. The Plaintiffs amended the suit to add Defendants 6 to 8 who are now stated to be in possession of the suit premises, admittedly belonging to the Plaintiff.

14. The Defendants 1 to 4 contend that they are the tenants of the suit premises under the same agreement of conducting relied upon by the Plaintiffs and in which respect the suit is filed.

15. It is contended on their behalf that despite the expression of the said agreement they have continued in possession because it was in fact a tenancy agreement. They therefore, submit that they are not conducting as shown in the agreement but tenants of the Plaintiff's father on the suit premises. They contend that none of these parties being Sai Engineering Works or TELCO or Defendant No.5 or Defendant No.6 are in possession and that they have continued in exclusive possession since the date of the agreement i.e. since 31st December, 1970. They claim that machinery mentioned in the agreement was sold to them and the lease which was created under the said agreement has been extended from time to time. Consequently they claim that they have paid increased monthly royalty and also permitted increases like municipal taxes.

16. They further make a surprising claim that under the Plaintiff's father's WILL Defendant No.1 was "given" the said premises on lease. The WILL is stated to be probated. The probate is neither relied upon nor annexed to the affidavit in reply, nor produced in the Court. If the Plaintiff's father had

created a lease on 31st December, 1970, the bequest if any under the WILL would be redundant. If any such bequest is made, it would be only if a prior lease was not created. A statement or a mention in any WILL stating facts is of hardly any consequence if there is no bequest to that end.

17. Defendants 1 to 4 contend that they are doing job work for these parties. They have contended that they did job work for Defendant No.5. Their Advocate states that at present Defendants 1 to 4 are doing job work for Defendant No.6.

18. It is surprising how defendants 1 to 4 do job work of servicing cars of only one party. If they are in the business of servicing cars for which they are in exclusive possession, they would take up job works of various parties for the business that they carry on.

19. The case of Defendants 1 to 4 itself shows that one party at a time has been inducted in the premises. A show has been made that Defendants 1 to 4 carry on job work for that party.

20. Though in respect of all these parties documentary evidence of payment of monthly rent/compensation cannot be produced by the Plaintiffs since it would be an arrangement with Defendant Nos.1

to 4 and that party, the reference to the TDS challans of TELCO specifically shows that long before the other parties came into the suit premises or had any contact with the Defendants 1 to 4, the induction by Defendants 1 to 4 in favour of the TELCO was made.

21. Primafacie therefore, the Plaintiffs have shown how Defendants 1 to 4 have from time to time sought to deal with the Plaintiff's premises. It shall ofcourse, be seen at the time of trial as to what precisely was the arrangement between the parties, the agreement of conducting notwithstanding. Until the trial the plaintiff's premises is required to be protected.

22. Under the ad-interim order dated 23rd August, 2004 in Notice of Motion No.2742 of 2004 the Defendants have been restrained from transferring or disposing of or parting with possession or otherwise creating any third party right in the suit premises. There after there has been no further induction.

23. However, the fact remains that the present royalty between the Plaintiffs and Defendants 1 to 4 is stated to be Rs.2350/- which is not regularly paid by Defendants 1 to 4 and for which defaults as stated have been made. It is primafacie seen that Defendants 1 to 4 do receive far larger specified amounts each month from the other party carrying on business in the

suit premises. The Plaintiffs have therefore, further prayed for appointment of Court Receiver and for being appointed Agent of the Court Receiver and for a further monthly compensation of Rs.7500/- from the Defendants.

24. The suit premises deserve to fetch a far higher specified amount each month since the Defendants are putting the premises to use for their commercial activities even if their statement is correct.

25. Hence, following order:-

O R D E R

(i). Court Receiver is appointed Receiver in respect of the suit premises being Arch.No.35, under Mahalaxmi Bridge, Mahalaxmi, Mumbai 400 034.

(ii). Defendants shall continue in possession as Agent of the Court Receiver, High Court, Bombay.

(iii). The Court Receiver shall determine the royalty amount payable by the Defendants pending the suit taking into consideration the amounts received by the Defendants 1 to 4 from Defendant no.6.

(iv). The Defendants 1 to 4 shall pay the Royalty

amount to the Court Receiver regularly each month. The Plaintiff shall be entitled to withdraw those amounts, subject to deductions of the Receiver's costs, charges and expenses.

(v). If the Defendants 1 to 4 make any 3 defaults in the payment of Royalty, Court Receiver shall appoint the Plaintiffs as his agents in the place and stead of Defendants 1 to 4 upon taking possession of the suit premises from Defendants 1 to 4. In that case the Plaintiffs shall be put in possession by the Court Receiver free of the payment of Royalty.

(vi). The Ad-interim relief in terms of prayer clause (b) in Notice of Motion No.2742 of 2004 which was granted on 23rd August, 2004 shall continue pending the suit.

(vii). Notice of Motion No.1335 of 2003 as well as Notice of Motion No.2742 of 2004 are disposed of accordingly.

(viii). This order is stayed for 3 weeks.

(SMT.R.S.DALVI,J.)